

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

May 7, 2021

1:35 p.m.

MEMBERS PRESENT

Senator Roger Holland, Chair
Senator Mike Shower, Vice Chair
Senator Shelley Hughes
Senator Robert Myers
Senator Jesse Kiehl

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 109

"An Act extending the termination date of the Board of Governors of the Alaska Bar Association; and providing for an effective date."

- HEARD & HELD

SENATE JOINT RESOLUTION NO. 7

Proposing amendments to the Constitution of the State of Alaska relating to prohibiting the establishment of a state tax without the approval of the voters of the state; and relating to the initiative process.

- MOVED CSSJR 7(JUD) OUT OF COMMITTEE

SENATE JOINT RESOLUTION NO. 5

Proposing amendments to the Constitution of the State of Alaska relating to an appropriation limit; and relating to the budget reserve fund.

- MOVED CSSJR 5(JUD) OUT OF COMMITTEE

SENATE BILL NO. 39

"An Act relating to elections; relating to voter registration; relating to ballots and a system of tracking and accounting for ballots; establishing an election offense hotline; designating

as a class A misdemeanor the collection of ballots from other voters; designating as a class C felony the intentional opening or tampering with a sealed ballot, certificate, or package of ballots without authorization from the director of the division of elections; and providing for an effective date."

- HEARD & HELD

SENATE JOINT RESOLUTION NO. 6

Proposing amendments to the Constitution of the State of Alaska relating to the Alaska permanent fund, appropriations from the permanent fund, and the permanent fund dividend.

- BILL HEARING RESCHEDULED TO 5/10/2021

PREVIOUS COMMITTEE ACTION

BILL: HB 109

SHORT TITLE: EXTEND BAR ASS'N BOARD OF GOVERNORS

SPONSOR(S): REPRESENTATIVE(S) CLAMAN

02/22/21	(H)	READ THE FIRST TIME - REFERRALS
02/22/21	(H)	JUD, FIN
03/22/21	(H)	JUD AT 1:30 PM GRUENBERG 120
03/22/21	(H)	Heard & Held
03/22/21	(H)	MINUTE(JUD)
03/24/21	(H)	JUD AT 1:30 PM GRUENBERG 120
03/24/21	(H)	Moved HB 109 Out of Committee
03/24/21	(H)	MINUTE(JUD)
03/25/21	(H)	JUD RPT 4DP 2NR 1AM
03/25/21	(H)	DP: DRUMMOND, SNYDER, KREISS-TOMKINS, CLAMAN
03/25/21	(H)	NR: EASTMAN, VANCE
03/25/21	(H)	AM: KURKA
04/09/21	(H)	FIN REFERRAL REMOVED
04/12/21	(H)	FIN AT 9:00 AM ADAMS 519
04/12/21	(H)	<Bill Hearing Canceled>
04/19/21	(H)	TRANSMITTED TO (S)
04/19/21	(H)	VERSION: HB 109
04/21/21	(S)	READ THE FIRST TIME - REFERRALS
04/21/21	(S)	JUD
05/05/21	(S)	JUD AT 1:30 PM BUTROVICH 205
05/05/21	(S)	Heard & Held
05/05/21	(S)	MINUTE(JUD)
05/07/21	(S)	JUD AT 1:30 PM BUTROVICH 205

BILL: SJR 7

SHORT TITLE: CONST. AM: STATE TAX; VOTER APPROVAL
SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/22/21	(S)	READ THE FIRST TIME - REFERRALS
01/22/21	(S)	STA, JUD, FIN
02/04/21	(S)	STA AT 3:30 PM BUTROVICH 205
02/04/21	(S)	Heard & Held
02/04/21	(S)	MINUTE(STA)
02/11/21	(S)	STA AT 3:30 PM BUTROVICH 205
02/11/21	(S)	Scheduled but Not Heard
02/23/21	(S)	STA AT 3:30 PM BUTROVICH 205
02/23/21	(S)	Moved SJR 7 Out of Committee
02/23/21	(S)	MINUTE(STA)
02/24/21	(S)	STA RPT 1DP 3NR
02/24/21	(S)	DP: SHOWER
02/24/21	(S)	NR: HOLLAND, KAWASAKI, COSTELLO
04/28/21	(S)	JUD AT 1:30 PM BUTROVICH 205
04/28/21	(S)	-- MEETING CANCELED --
04/30/21	(S)	JUD AT 1:30 PM BUTROVICH 205
04/30/21	(S)	Heard & Held
04/30/21	(S)	MINUTE(JUD)
05/03/21	(S)	JUD AT 1:30 PM BUTROVICH 205
05/03/21	(S)	Heard & Held
05/03/21	(S)	MINUTE(JUD)
05/07/21	(S)	JUD AT 1:30 PM BUTROVICH 205

BILL: SJR 5

SHORT TITLE: CONST. AM: APPROP LIMIT; BUDGET RESERVE
SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/22/21	(S)	READ THE FIRST TIME - REFERRALS
01/22/21	(S)	STA, JUD, FIN
02/04/21	(S)	STA AT 3:30 PM BUTROVICH 205
02/04/21	(S)	Heard & Held
02/04/21	(S)	MINUTE(STA)
02/11/21	(S)	STA AT 3:30 PM BUTROVICH 205
02/11/21	(S)	Scheduled but Not Heard
02/23/21	(S)	STA AT 3:30 PM BUTROVICH 205
02/23/21	(S)	Moved SJR 5 Out of Committee
02/23/21	(S)	MINUTE(STA)
02/24/21	(S)	STA RPT 1DP 2NR 1AM
02/24/21	(S)	DP: HOLLAND
02/24/21	(S)	NR: SHOWER, COSTELLO
02/24/21	(S)	AM: KAWASAKI
04/28/21	(S)	JUD AT 1:30 PM BUTROVICH 205
04/28/21	(S)	-- MEETING CANCELED --
04/30/21	(S)	JUD AT 1:30 PM BUTROVICH 205

04/30/21	(S)	Heard & Held
04/30/21	(S)	MINUTE(JUD)
05/03/21	(S)	JUD AT 1:30 PM BUTROVICH 205
05/03/21	(S)	Heard & Held
05/03/21	(S)	MINUTE(JUD)
05/07/21	(S)	JUD AT 1:30 PM BUTROVICH 205

BILL: SB 39

SHORT TITLE: BALLOT CUSTODY/TAMPERING; VOTER REG; MAIL

SPONSOR(s) : SHOWER

01/25/21	(S)	PREFILE RELEASED 1/15/21
01/25/21	(S)	READ THE FIRST TIME - REFERRALS
01/25/21	(S)	STA, JUD
01/26/21	(S)	STA AT 3:30 PM BUTROVICH 205
01/26/21	(S)	-- MEETING CANCELED --
01/28/21	(S)	STA AT 3:30 PM BUTROVICH 205
01/28/21	(S)	Heard & Held
01/28/21	(S)	MINUTE(STA)
02/02/21	(S)	STA AT 3:30 PM BUTROVICH 205
02/02/21	(S)	Heard & Held
02/02/21	(S)	MINUTE(STA)
02/09/21	(S)	STA AT 3:30 PM BUTROVICH 205
02/09/21	(S)	Scheduled but Not Heard
02/11/21	(S)	STA AT 3:30 PM BUTROVICH 205
02/11/21	(S)	Heard & Held
02/11/21	(S)	MINUTE(STA)
02/16/21	(S)	STA AT 3:30 PM BUTROVICH 205
02/16/21	(S)	Heard & Held
02/16/21	(S)	MINUTE(STA)
02/18/21	(S)	STA AT 3:30 PM BUTROVICH 205
02/18/21	(S)	-- MEETING CANCELED --
02/25/21	(S)	STA AT 3:30 PM BUTROVICH 205
02/25/21	(S)	Heard & Held
02/25/21	(S)	MINUTE(STA)
03/16/21	(S)	STA AT 3:30 PM BUTROVICH 205
03/16/21	(S)	Heard & Held
03/16/21	(S)	MINUTE(STA)
03/18/21	(S)	STA AT 3:30 PM BUTROVICH 205
03/18/21	(S)	Scheduled but Not Heard
03/30/21	(S)	STA AT 3:30 PM BUTROVICH 205
03/30/21	(S)	Scheduled but Not Heard
04/01/21	(S)	STA AT 3:30 PM BUTROVICH 205
04/01/21	(S)	-- MEETING CANCELED --
04/08/21	(S)	STA AT 3:30 PM BUTROVICH 205
04/08/21	(S)	Scheduled but Not Heard
04/15/21	(S)	STA AT 3:30 PM BUTROVICH 205

04/15/21	(S)	Heard & Held
04/15/21	(S)	MINUTE(STA)
04/20/21	(S)	STA AT 3:30 PM BUTROVICH 205
04/20/21	(S)	-- MEETING CANCELED --
04/21/21	(S)	STA WAIVED PUBLIC HEARING NOTICE, RULE 23
04/22/21	(S)	STA AT 3:30 PM BUTROVICH 205
04/22/21	(S)	Heard & Held
04/22/21	(S)	MINUTE(STA)
04/22/21	(S)	STA AT 6:00 PM BUTROVICH 205
04/22/21	(S)	Heard & Held
04/22/21	(S)	MINUTE(STA)
05/04/21	(S)	STA AT 3:30 PM BUTROVICH 205
05/04/21	(S)	Moved CSSB 39(STA) Out of Committee
05/04/21	(S)	MINUTE(STA)
05/07/21	(S)	JUD AT 1:30 PM BUTROVICH 205

WITNESS REGISTER

DANIELLE BAILEY, Executive Director
Alaska Bar Association
Anchorage, Alaska

POSITION STATEMENT: Testified during the discussion of HB 109.

BEN HOFMEISTER, President
Board of Governors
Alaska Bar Association
Alaska Court System
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the discussion of HB 109.

REPRESENTATIVE MATT CLAMAN
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Spoke as the sponsor of HB 109.

MIKE BARNHILL, Deputy Commissioner
Department of Revenue
Juneau, Alaska

POSITION STATEMENT: Answered questions on SJR 7.

WILLIAM MILKS, Senior Assistant Attorney General
Legislation & Regulations Section
Civil Division
Department of Law
Juneau, Alaska

POSITION STATEMENT: Answered legal questions during the hearing on SJR 5.

NEIL STEININGER, Director
Office of Management and Budget
Office of the Governor
Juneau, Alaska

POSITION STATEMENT: Answered questions on SJR 5 on behalf of the administration.

ED KING, Staff
Senator Roger Holland
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions on behalf of the sponsor of SJR 7.

ACTION NARRATIVE

[1:35:06 PM](#)

CHAIR ROGER HOLLAND called the Senate Judiciary Standing Committee meeting to order at 1:35 p.m. Present at the call to order were Senators Myers, Hughes, Shower, Kiehl and Chair Holland.

HB 109-EXTEND BAR ASS'N BOARD OF GOVERNORS

[1:35:38 PM](#)

CHAIR HOLLAND announced the consideration of HOUSE BILL NO. 109, "An Act extending the termination date of the Board of Governors of the Alaska Bar Association; and providing for an effective date."

[This is the second hearing. The bill was previously heard on 5/5/21, and public testimony was opened and closed.]

[1:36:15 PM](#)

DANIELLE BAILEY, Executive Director, Alaska Bar Association, Anchorage, Alaska, reported on the actions taken by the Board of Governors of the Alaska Bar at its meeting yesterday. The board created a subcommittee to consider whether to increase the mandatory continuing legal education (CLE). According to Bar Rule 62, the Board of Governors cannot change the bar rules. Instead, the Alaska Supreme Court (ASC) must make those changes. The Board of Governors circulates a rule change to membership, publishes it the Alaska Bar Association's publication, the Bar Rag, then the Board of Governors discusses any public comment

received. Following the public comment period, the board can submit the rule proposal to the Alaska Supreme Court.

MS. BAILEY offered her belief that this audit was a little different than the last sunset audit eight years ago. At that time, the board created a Mandatory Continuing Legal Education Committee to poll membership. The Bar Association membership voted against increasing mandatory continuing legal education (CLE) hours. The board decided not to poll the Bar Association membership on mandatory CLE this year. Instead, it formulated a plan to increase mandatory CLE hours. The committee presented its recommendations to the Board of Governors. Yesterday, the board established a subcommittee to begin the process to potentially forward a new proposal to address mandatory CLE to the Alaska Supreme Court.

1:38:48 PM

SENATOR HUGHES pointed out that the Board of Governors is empowered to approve and recommend rule changes to the Alaska Supreme Court and adopt bylaws and regulations. Referring to the recent sunset audit, she asked if the number of continuing legal education credits would fall under a rule rather than bylaws and regulations.

MS. BAILEY responded that is correct. She said that Bar Rule 65 outlines the number of mandatory continuing legal education (CLE) credits for bar members.

SENATOR HUGHES noted the sunset audit was dated June 9, 2020. She asked why the board is just now meeting to make that decision and why the process was not started last summer.

MS. BAILEY answered that the next board meeting was scheduled for October 20, 2020. The board established a CLE committee to make recommendations to the board. This committee has met three times since October 2020. The CLE committee sent a proposal to the Board of Governors, which was received at yesterday's meeting. She said the board immediately established a subcommittee to look into this matter.

1:40:55 PM

SENATOR HUGHES asked how often the Board of Governors meets. She expressed concern about the 11-month lapse before the subcommittee was set up. She asked whether the board could create a workgroup between meetings to address concerns such as mandatory CLEs.

MS. BAILEY responded that the Board of Governors meets four times per year, although the board sometimes meets for special meetings. Since the legislative auditor just released its report this summer, the board first wanted to hear expertise from the subcommittee.

[1:41:52 PM](#)

SENATOR HUGHES pointed out that 44 other states require significantly more continuing legal education (CLE) than Alaska.

[1:42:13 PM](#)

BEN HOFMEISTER, President, Board of Governors, Alaska Bar Association, Alaska Court System, Anchorage, Alaska, explained that the board received the legislative sunset audit report [Audit Control Number 41-20119-20] in June 2020. The Board of Governors filed a response, indicating the board would address the mandatory CLE matter. He assured members that the board was working on this issue. The recommendations provided several options for consideration. The Board of Governors wanted a subcommittee to consider all options rather than have the 12-voting member board make the decision. He emphasized that Alaska requires more mandatory CLE for ethics than all other states. Although some states require three hours of ethics continuing education training, those states spread the requirements out over three years. Alaska requires continuing legal ethics education every year. Of course, Alaska could do more, he said. He assured members the Board of Governors wants to keep Alaskans safe. Thus, the board will forward its recommendations to the Alaska Supreme Court, but it must consider options first.

[1:44:36 PM](#)

SENATOR HUGHES offered her appreciation for the attention to ethics. However, Alaskans spend significant income on legal fees, so it's important to assure them that the profession is doing its best. She reported that the sunset audit indicates the board met 18 times in three years, which on average is 6 times per year. She expressed concern that the audit identified 7 of 9 public meetings were not public noticed on its website. Further, 6 of 9 board agendas did not specifically provide for public comment. While she understood the mandatory CLEs might not apply to some legal practices, 44 states have more mandatory CLE requirements than Alaska. She stated her goal is to have Alaskans well served.

[1:46:15 PM](#)

SENATOR KIEHL commented that he spoke to several attorneys who did not oppose increasing mandatory CLE. However, these

attorneys indicated they would like more CLE topics relevant to their practices. He said that adding variety would likely dissipate any concern that attorneys have about adding additional requirements.

[1:47:02 PM](#)

REPRESENTATIVE MATT CLAMAN, Alaska State Legislature, Juneau, Alaska, sponsor of HB 109, stated that it might be helpful for the board or staff to provide the options the CLE Committee referred to the Board of Governors since those considerations slowed the board's process down.

[1:47:35 PM](#)

MS. BAILEY replied that one option was to increase the mandatory CLEs for ethics since the primary continuing legal education focus should be ethics. The committee attributed the state's lowest complaints per attorney to the current requirements for ethics mandatory CLEs. Another proposal was not to change the current mandatory CLE requirements, although the subcommittee may provide the board with other options.

[1:48:52 PM](#)

SENATOR SHOWER offered that 8 years is a long time between reviews. While he said he is glad the Board of Governors will consider continuing education requirements and options, the committee should consider reducing the time for the next audit review.

[1:51:42 PM](#)

SENATOR KIEHL pointed out that the auditor has recommended that the board be extended for eight years. He suggested a better approach to change timeframes would be to change the auditor's parameters in AS 08.03.020 since it will affect all boards.

[HB 109 was held in committee.]

SJR 7-CONST. AM: STATE TAX; VOTER APPROVAL

[1:52:10 PM](#)

CHAIR HOLLAND announced the consideration of SENATE JOINT RESOLUTION NO. 7, Proposing amendments to the Constitution of the State of Alaska relating to prohibiting the establishment of a state tax without the approval of the voters of the state; and relating to the initiative process.

[This is the third hearing on SJR 7. Previous hearings were held on 4/30/21 and 5/3/21. Public testimony was opened and closed on 4/30/21.]

[1:53:01 PM](#)

SENATOR MYERS moved to adopt Amendment 1, [work order 32-GS1711\A.1]:

32-GS1711\A.1
Nauman
5/3/21

AMENDMENT 1

OFFERED IN THE SENATE
TO: SJR 7

BY SENATOR MYERS

Page 1, line 2, following "state;":

Insert "**requiring a two-thirds vote in each house of the legislature to change the rate of an existing state tax;**"

Page 2, following line 13:

Insert a new subsection to read:

"(d) Notwithstanding Section 14 of Article II, the rate of an existing state tax may be changed by the legislature only upon affirmative vote of two-thirds of the members of each house of the legislature. Nothing in this subsection alters the ability of the people to change the rate of an existing state tax by initiative or to reject a change in the rate of an existing state tax made by the legislature by referendum."

CHAIR HOLLAND objected for discussion purposes.

[1:53:06 PM](#)

SENATOR MYERS explained Amendment 1 will address a concern that Senator Hughes raised. The public might approve a 2 percent statewide sales tax in one year but the next year the legislature could raise that tax to 10 percent. Since it would not be establishing a new tax, it would not be subject to a vote of the people. He recalled that the City of North Pole initially enacted a sales tax of 3 percent but the tax is now 5 percent. Since it would be cumbersome to go back to the voters each time, Amendment 1 raises a higher bar by requiring a two-thirds vote in each house of the legislature to change the rate of an

existing state tax, which he thought was a reasonable compromise.

1:54:44 PM

SENATOR KIEHL asked if Amendment 1 was intended to affect the base rates or the effective rates.

SENATOR MYERS responded that Amendment 1 would apply to the base rate. He said his point was not to require a two-thirds vote by the legislature unless the base rate of a tax was raised.

SENATOR KIEHL recalled that former colleague Representative Gara once introduced a bill to delete the gross value reduction for Alaska's oil taxes. That would not have changed the rate, but the government's share would have significantly increased. He asked if Amendment 1 would require a supermajority or two-thirds vote.

SENATOR MYERS said he was unsure.

SENATOR KIEHL noted that if an existing tax type had a negative adjustment applied to the basis, it would not change the base rate. Although this would significantly increase the state's take, it would not be impacted by Amendment 1.

SENATOR MYERS asked for clarification if he referred to a negative change in the rate.

SENATOR KIEHL explained that his scenario relates to a negative change in the basis. He said it would be the same as if the legislature deleted the gross value reduction. Thus, it would increase the value to be taxed by some legislatively determined number, such that it would effectively increase the tax but not touch the rate.

1:56:56 PM

SENATOR MYERS asked if this would be similar to property tax exemptions, such that residents can reduce their property tax liability from \$20,000 to \$10,000.

SENATOR KIEHL answered that the scenario he described would effectively change the tax liability for those receiving the tax exemption.

SENATOR MYERS responded that the scenario he described would not take a two-thirds vote under Amendment 1.

CHAIR HOLLAND removed his objection. There being no further objection, Amendment 1 was adopted.

[1:58:08 PM](#)

SENATOR MYERS moved to adopt Amendment 2, [work order 32-GS1711\A.2]:

32-GS1711\A.2
Nauman
5/4/21

AMENDMENT 2

OFFERED IN THE SENATE
TO: SJR 7

BY SENATOR MYERS

Page 2, line 8:

Delete "by a majority vote in joint session"

SENATOR HOLLAND objected for discussion purposes.

[1:58:23 PM](#)

SENATOR MYERS explained Amendment 2. If the voters approved a tax through the initiative process, Amendment 2 would require the legislature to approve it by resolution. However, the legislature would not need to approve the resolution in joint session. He acknowledged that it could be cumbersome to require a joint session since one presiding officer could block the session.

CHAIR HOLLAND asked if the administration had any comments.

[1:59:47 PM](#)

MIKE BARNHILL, Deputy Commissioner, Department of Revenue, Juneau, Alaska, responded that the administration has no opinion on Amendment 2. He related his understanding that for the legislature to approve an initiated tax under Amendment 2 would require a simple majority of 21 votes in the House and 11 votes in the Senate.

[2:00:16 PM](#)

SENATOR KIEHL asked if the requirement to approve the resolution in joint session is removed, whether the legislature could choose to approve the resolution in joint session rather than in regular sessions.

SENATOR MYERS suggested that Legislative Legal Services could confirm whether the legislature could do so. He said it seemed unlikely the legislature would call a joint session for any matter it is not required to do so. He said that joint sessions are used for specific purposes.

[2:01:25 PM](#)

SENATOR HUGHES asked Mr. Milks if the committee deleted the language "in joint session" whether it would give the legislature either option.

[2:01:53 PM](#)

WILLIAM MILKS, Senior Assistant Attorney General, Legislation & Regulations Section, Civil Division, Department of Law, Juneau, Alaska, stated that the proposed bill includes the language "by a majority vote in joint session." If the committee removes that language, it will change the voting requirement since a majority vote in joint session differs from a majority vote of each body. He did not think the legislature could take a majority vote in joint session because it would be contrary to Amendment 2. He referred to page 2, lines 7 to 8 of Amendment 2, which reads, "to not take effect unless the legislature by resolution approves the initiated law before the adjournment of the next regular session." He said the legislative history would show the initial requirement for joint session was removed. As Mr. Barnhill stated, it would mean each House was acting by majority vote, he said.

[2:04:08 PM](#)

SENATOR HUGHES asked for clarification whether the legislature would have the option to approve the resolution in joint session or in regular session under Amendment 2.

MR. MILKS responded that because the legislature acts in each House by majority vote except for a few rare circumstances, there would be a question about the ability to take this action in a joint session. He highlighted that the Alaska Constitution indicates meeting and acting by a majority vote in joint session for approval of appointments.

[2:05:34 PM](#)

SENATOR HUGHES acknowledged that politics could arise since each body may be controlled by different parties. Therefore, meeting in joint session rather than approving the resolution in each body could change the outcome. She asked the administration why the bill required a joint session for approval.

MR. BARNHILL offered his view that the language represents parity in drafting with other provisions in the Alaska Constitution.

2:06:56 PM

SENATOR KIEHL offered his view that it was unlikely the legislature could refer a resolution to a joint session under the Uniform Rules. He expressed concern that it would remove a governor's opportunity to convene a joint session. He highlighted that under Amendment 2, any committee chair could stop the resolution from being heard. He argued that having the joint session option would allow a governor to make the case that the people have voted and the resolution should be considered. The governor can convene a joint session. While SJR 7 has troubling components, this amendment will allow the governor the opportunity to put legislators on the record if they go against what the voters decide. He suggested that Amendment 2 is likely the wrong direction to go.

2:09:03 PM

SENATOR MYERS recalled Senator Kiehl previously raised the issue that a committee chair could block the resolution. However, the legislature could use Rule 48 to discharge the resolution from committee, he said. He cautioned that if the legislature must approve the resolution in joint session, a presiding officer could block the joint session. He related his understanding that the governor could call the legislature into special session, but he was not aware that the governor could call the legislature into a joint session.

SENATOR KIEHL referred to Article 3, Section 17, which read, "Whenever the governor considers it in the public interest, he may convene the legislature, either house or the two houses in joint session."

SENATOR MYERS said he stands corrected.

2:10:30 PM

CHAIR HOLLAND said he tended to favor the original language in the bill.

SENATOR MYERS withdrew Amendment 2.

2:11:38 PM

SENATOR KIEHL stated his objection to SJR 7. He offered his belief that SJR 7 was anti-democratic and anti-republican. In essence, SJR 7 does not provide a philosophy of government or a

philosophy of how government should function. Instead, it would make any attempt to institute taxes more difficult. It is not a relationship between the people and the government representing them but a means to put something into the foundational document. He said he will object to moving SJR 7.

[2:13:21 PM](#)

SENATOR HUGHES remarked that it is rare for taxes to go down, but it is common for them to go up over time. She offered her view that government doesn't produce its own wealth but it relies on the private sector to do so. She said she preferred to make it more difficult to institute taxes and add checks and balances. She expressed concern that Alaska's spending per capita is so high. She recalled that research has shown Alaska's spending per capita is higher than other states since the state provides services in rural Alaska. Although she has some little mixed feelings about SJR 7, she said she likes the checks and balances it provides. She acknowledged she is willing to make tough decisions so she is willing to move SJR 7 forward.

[2:14:51 PM](#)

SENATOR SHOWER offered his view that the committee should carefully deliberate on constitutional amendments to avoid unintended consequences. While he doesn't want to limit the legislature's ability to do its job, he also recognizes the initiative process is cumbersome and expensive. He cited the legislature's inability to protect and provide the permanent fund dividend (PFD) in the past six years as an example of the legislature not following the people's will. He viewed SJR 7 as giving the people more voice in the process. He agreed that SJR 7 should be carefully vetted. He offered his support for SJR 7.

[2:16:37 PM](#)

SENATOR MYERS referred to the Alaska Constitution's structure. He said that policy decisions are written in the Alaska Constitution, beginning with Article 1, which establishes the rights of the people. Articles 2 through 4 provide for government structure and the balance of powers. The remaining articles pertain to policy calls on taxation, managing natural resources, and education. He offered his view that occasionally constitutional amendments are needed to address policy changes. Ultimately, the policy call in SJR 7 identifies that perhaps government, in particular the legislature, has become too powerful and needs to be restrained a little. He characterized SJR 7 as relating to trust and whether the people trust the legislature. SJR 7 is one means of showing that the legislature is worthy of that trust, he said.

[2:18:28 PM](#)

SENATOR SHOWER moved to report SJR 7, as amended, from committee with individual recommendations and attached fiscal note(s).

SENATOR KIEHL maintained his objection.

[2:18:43 PM](#)

A roll call vote was taken. Senators Myers, Hughes, Shower and Holland voted in favor of moving SJR 7, as amended, from committee and Senator Kiehl voted against it. Therefore, CSSJR 7(JUD) was reported from committee by a 4:1 vote.

[2:19:05 PM](#)

At ease

SJR 5-CONST. AM: APPROP LIMIT; BUDGET RESERVE

[2:21:10 PM](#)

CHAIR HOLLAND reconvened the meeting announced the consideration of SENATE JOINT RESOLUTION NO. 5, Proposing amendments to the Constitution of the State of Alaska relating to an appropriation limit; and relating to the budget reserve fund.

[2:21:35 PM](#)

SENATOR HOLLAND moved to adopt Amendment 1, [work order 32-GS1664\A.2]:

32-GS1664\A.2

Marx

5/5/21

AMENDMENT 1

OFFERED IN THE SENATE

BY SENATOR HOLLAND

TO: SJR 5

Page 1, line 5:

Delete "Except"

Insert "**(a) Except as provided in (b) of this section and except** [EXCEPT]"

Page 2, following line 20:

Insert a new subsection to read:

"(b) The legislature may appropriate an additional amount in excess of the appropriation limit under (a) of this section for capital projects, if the

appropriation is approved by a majority of the qualified voters of the state who vote on the question. Appropriations for capital projects that exceed the appropriation limit shall not be used in calculating the appropriation limit in subsequent fiscal years."

SENATOR SHOWER objected for discussion purposes.

[2:21:43 PM](#)

SENATOR HOLLAND explained Amendment 1. He read:

This amendment adds a subsection which allows the legislature to exceed the spending limit for capital projects, if we find ourselves in a better financial situation in the future. The process for exceeding the spending cap is the same as issuing a general obligation bond, which is already exempted from the cap. By putting this type of spending on par with issuing debt, it avoids pushing future legislators toward issuing debt when the state has the funds to pay for capital projects. The last sentence of the new subsection is critical to ensure that approving spending above the cap doesn't reset the spending limit to a higher level.

[2:22:47 PM](#)

NEIL STEININGER, Director, Office of Management and Budget, Office of the Governor, Juneau, Alaska, stated that Amendment 1 uses different language than the Alaska Constitution related to general obligation (GO) bonds. Amendment 1 uses the term "capital projects" rather than "capital improvements" language used in GO bond language. The administration does not have a position on this. It is the legislature's policy call on how capital spending is considered in the cap.

[2:23:25 PM](#)

SENATOR SHOWER recalled that several years ago, the legislature discussed placing a limit on the "waterfall provision" or going over the spending cap. He asked whether the sponsor was amenable to placing a cap on the spending limit.

[2:24:18 PM](#)

CHAIR HOLLAND asked if Amendment 1 should be amended to change the wording from "capital projects" to "capital improvements."

MR. STEININGER answered yes. He stated that "capital projects" in the capital budget typically include things that are not physical or durable assets. He said "capital improvements" is a stricter definition.

2:25:32 PM

SENATOR HUGHES said she would like to consider capital projects for alternative energy projects in the villages to move away from the high cost of fossil fuel use. She asked if the language "capital improvements" was used, the legislature would need to use the funds for an existing project.

2:26:06 PM

SENATOR SHOWER asked if both terms could be used.

MR. STEININGER deferred to Mr. Milks.

2:26:44 PM

MR. MILKS responded that "capital projects" is the language in the current appropriation limit. However, Article IX, Section 8, on state debt uses the term "capital improvements. The current appropriation limit uses "capital projects" but the appropriation limit has not been particularly effective. He said that "capital improvements" used in Article 9, Section 8, for GO bonds has not been considered an improvement of an existing capital asset. He offered his view that "capital improvements" is a broader term.

CHAIR HOLLAND referred to Senator Hughes' example of sustainable energy in rural Alaska. He offered his view that it might be seen as an improvement of the power system rather than an improvement of a diesel generator.

MR. MILKS replied that capital projects would usually be interpreted to mean some type of physical asset. He suggested that the most important is considering what the committee wants to be covered by the term. Currently, the bill refers to "capital projects". He agreed with Mr. Steininger that "capital improvements" is a broader term. When interpreting the Alaska Constitution, it is important to consider what an ordinary person would think of as a "capital project." He suggested it would likely be some kind of hard asset. Further, it is important to consider the intent of the committee. The committee could undoubtedly refine the language.

2:30:11 PM

SENATOR KIEHL recalled that capital improvements for GO bonds must be durable and fixed, so a fire truck would not qualify according to legal opinions. Maintenance can qualify as a capital improvement, but preventative maintenance cannot. However, a capital project is defined in statute, such that it must be more than \$25,000 and a one-time occurrence. The language is much broader and could include a software license even though it is not permanent or durable.

[2:32:14 PM](#)

ED KING, Staff, Senator Roger Holland, Alaska State Legislature, Juneau, Alaska, stated that the Alaska Constitution uses capital improvements in Article IX, Section 8 and capital projects in Article IX, Section 16. He offered his view that Amendment 1 appears to be consistent with language for GO bonds, so using the language "capital improvements" would be more consistent. He said it would be acceptable for the legislature to provide more latitude and include projects beyond improvements, which is a policy call. Amendment 1 would require a vote of the people.

MR. KING stated that Senator Shower described how this bill evolved over the previous legislative cycle. At the time, he testified about a waterfall provision. However, that provision was explicitly related to situations in which revenues exceeded the cap and how to distribute those revenues. This resolution would deposit those revenues owed to the CBR into the Constitutional Budget Reserve (CBR), and it is silent on the funds not owed to the CBR. He characterized Amendment 1 not as a waterfall provision but rather as an exemption to the spending limit for capital projects or improvements, consistent with issuing GO bonds. Without this language, the legislature has an incentive to issue debt to avoid the cap and use its debt capacity to reduce its general funds. Using this language allows the legislature to fund capital projects in the same way that the legislature would fund debt without actually issuing debt.

[2:34:20 PM](#)

SENATOR SHOWER asked if the terms "capital projects" and "capital improvements" should both be used for consistency purposes, but the committee should place some type of limit. He asked if another amendment should cover that because the intent was not to spend every penny. He suggested the waterfall provision is necessary since the state needs to catch up on capital improvements.

[2:35:13 PM](#)

MR. KING replied he leans toward not using both capital projects and capital improvements in Amendment 1, since it seems that capital projects encompass capital improvements. He suggested the committee should use one or the other. In terms of the waterfall provision, because Amendment 1 requires a vote of the people, it is not necessary to have a limit. When the legislature discussed this issue previously the vote of the people was not necessary.

[2:35:55 PM](#)

SENATOR MYERS argued against the waterfall provision. He spoke in favor of Amendment 1 because without this language the legislature would have the ability to pile on more debt. Amendment 1 will allow the legislature to accomplish the projects but requires a vote by the people to exceed the spending limit. With the waterfall provision, the legislature could spend funds from regular revenue sources but also issue a GO bond. In fact, in 2010 or 2012 when revenue was still ample, the legislature went into debt and the voters agreed to pass a GO Bond proposal.

[2:37:31 PM](#)

SENATOR HUGHES asked if the legislature would need to repay the CBR before this provision would be triggered.

MR. KING stated he misspoke earlier. The payback provision is eliminated in the resolution so without amending the resolution, there is no obligation to repay the CBR.

SENATOR HUGHES asked how calendaring would work. For example, if the resolution passed, it would require placing something on the ballot for a general election.

MR. STEININGER responded that under Amendment 1, the process would mimic the GO bond process so the appropriations would not be valid until after the next statewide election was held.

[2:39:11 PM](#)

SENATOR KIEHL asked if Amendment 1 requires the appropriation to be approved during a general election rather than a primary or special election.

MR. STEININGER answered that he may have misspoken on the type of election. He deferred to Mr. Milks to speak to the mechanics of GO bond proposals. He said the language "if the appropriation is approved by a majority of the qualified voters of the state"

who vote on the question creates a condition so the state cannot spend against the appropriation until that condition is met.

2:40:06 PM

MR. KING offered his belief that GO bonds can be voted on in a special election.

MR. MILKS confirmed that GO bond bills can be submitted to the voters at a general election or special election.

2:40:48 PM

SENATOR KIEHL stated that if the GO bonds are not approved by the voters, the bonds are not sold. Amendment 1 does place any such requirement. The legislature and governor might agree on a perceived need and later submit the issue to the voters for approval, which would be ratification after the fact, he said.

MR. STEININGER related his understanding of the hypothetical scenario, that the legislature and the administration would appropriate and expend funds prior to meeting the conditions as laid out in the Constitution.

SENATOR KIEHL pointed out that currently, long-standing practices and attorneys general opinions allow those processes to occur. He offered his view that sometimes funds are expended in anticipation of an appropriation despite a statute that makes that action a crime.

MR. STEININGER asked if the attorney general opinion he was referring to states that after the legislature appropriates funds, the governor can inform the OMB director these funds will not be vetoed so the state can begin to expend the funds.

2:43:22 PM

SENATOR KIEHL recalled that the Alaska Budget Report previously criticized the legislature for its supplemental appropriations.

MR. STEININGER asked if he was referring to the supplemental appropriation process in which an unanticipated expenditure has occurred and a supplemental appropriation is required to complete the fiscal year without running out of funding.

SENATOR KIEHL pointed out that the state also ratifies negative balances. He questioned why the legislature couldn't just use this provision to ask the voters after the fact.

2:44:24 PM

MR. STEININGER responded that ratifications occur when the state expends funds in anticipation of federal funding but later the federal agency determines the expenditures were ineligible. This would not be considered an expenditure outside of the appropriation since the legislature has validly appropriated the ability to collect the revenues. It means the state must come back to the legislature for a supplemental appropriation to backfill the uncollectible funds. The legislature typically expends funds in the advance of receiving federal funding because that is how federal programs operate. The administration is not expending funds without a valid appropriation. It is characteristically different.

MR. STEININGER explained that Amendment 1 would establish a condition within the Constitution to set a contingency upon how an appropriation for a capital project could be executed upon. If the administration expended funds for a capital project without having met this contingency, it would be in violation of the Constitution. However, that is not a reason to not consider this issue. The possibility of a future executive branch choosing to violate the Constitution would be a separate issue. It would require a vote of the people before the executive branch could execute on it. He said he has faith in future OMB directors to ensure that contingencies are met on appropriations before expenditures.

[2:46:36 PM](#)

SENATOR HUGHES referred to Amendment 1. She asked if the language on line 7 uses "may" because if one legislature decided to put something before the voters it might require the next legislature to make the appropriation.

MR. KING answered that using "may" is simply to provide conditionality rather than strict guidance. It would not read "shall" because this is an option and not a requirement. The opportunity for the legislature to appropriate above the cap would be generated by this amendment. Once the appropriation is made by the legislature, it become valid once it goes before the voters for approval. There is not any need for secondary approval.

SENATOR HUGHES questioned the constitutionality of Amendment 1 because this language would allow a subsequent legislature to decide whether to include it in the budget.

[2:48:46 PM](#)

SENATOR SHOWER interjected that this speaks to contingency language on something that already occurred. He related his understanding that it provides contingency language upon approval and if it fails, the funds would not be spent.

[2:49:00 PM](#)

MR. KING responded that this would be the same process currently used in the capital project process. One legislature approves a project with a multi-year appropriation but a future legislature can reappropriate or decide not to continue a project. The fact that a future legislature can influence the expenditure does not negate that the appropriation occurred. He clarified that there is not any second appropriation requirement for a future legislature once the voters approve the measure.

SENATOR HUGHES reiterated that one legislature would appropriate the amount in the budgetary process but it would not go through unless approved by the legislature so a subsequent legislature would not do anything further.

MR. KING added that the legislature would not simply put an appropriation in the budget but would define the projects that are being approved.

[2:49:56 PM](#)

SENATOR KIEHL asked if appropriations are subject to or available for reappropriation.

MR. KING deferred to Mr. Milks.

[2:50:28 PM](#)

MR. MILKS reminded members that SJR 5 is amending the Constitution. He reviewed Amendment 1, which read, in part:

(b) The legislature may appropriate an additional amount in excess of the appropriation limit under (a) of this section for capital projects, if the appropriation is approved by a majority of the qualified voters of the state who vote on the question.

[2:50:59 PM](#)

MR. MILKS said this means the legislature may appropriate an additional amount for capital projects if the appropriation is approved by a majority of the qualified voters. He suggested that a reasonable interpretation would be that once the legislature appropriates funds and the voters approve the

appropriation for capital projects, the appropriation process is completed. Thus, it is a two-part process, with the legislature appropriating and the voters approving the appropriation. It is unlike a standard appropriation, in which only the legislature is acting on it and could return the funds.

MR. MILKS said that generally with constitutional amendments, the language itself is considered, any legislative discussion during committees is considered in an attempt to understand what the voters were informed by.

[2:52:00 PM](#)

At ease

[2:53:52 PM](#)

CHAIR HOLLAND reconvened the meeting.

[2:53:56 PM](#)

SENATOR SHOWER removed his objection. There being no further objection, Amendment 1 was adopted.

[2:54:27 PM](#)

SENATOR HOLLAND moved to adopt Amendment 2, [work order 32-GS1664\A.4]:

32-GS1664\A.4

Marx

5/5/21

AMENDMENT 2

OFFERED IN THE SENATE

BY SENATOR HOLLAND

TO: SJR 5

Page 1, line 9:

Delete "State savings account"

Insert "State account or fund that requires a subsequent appropriation from that account or fund as prescribed by law, appropriations for payment of the unfunded liability of a State retirement system"

SENATOR SHOWER objected for discussion purposes.

SENATOR HOLLAND explained Amendment 2:

This amendment attempts to clarify a potential ambiguity in the exclusions to the spending limit. For

example, a litigant could argue that the over \$1 billion appropriation to the Public Education Fund is exempt from the spending limit. Then, because the expenditures from that fund do not require further appropriation (AS 14.17.300), this litigant could also argue that the grants provided to school districts are also exempt from the cap. In this way, a future legislature could theoretically avoid the spending limit through a series of transfers that are not subject to further legislative action. This amendment makes clear that only transfers between accounts that maintain legislative control are exempt (just like a transfer between your checking and savings account isn't part of your household budget). It also allows transfers to the two accounts that should not be under the cap to be excluded - Appropriations to the Permanent Fund and payments to reduce our unfunded pension obligation.

[2:55:33 PM](#)

SENATOR HUGHES asked for further clarification on Amendment 2.

[2:55:55 PM](#)

MR. KING stated that just as in SJR 6 of the previous legislature, the language, "subject to further appropriation" was included to ensure that accounts that require further legislative action aren't considered part of the appropriation process and don't contribute to the spending cap. However, expenditures or appropriations to funds that are not subject to further appropriation, including the Public Education Fund, the Abandoned and Derelict Vessel Fund, the Oil and Gas Credit Fund and a series of other funds should be considered as appropriations when the transfer is made. Amendment 2 makes it clear that any account subject to further appropriation is simply a transfer between accounts. The legislature still maintains control so those transfers shouldn't contribute to the spending cap.

[2:57:10 PM](#)

MR. STEININGER stated that Amendment 2 further defines state savings accounts and provides additional clarity on this issue.

[2:57:28 PM](#)

SENATOR KIEHL asked how it would treat a future legislature's decision to deposit funds in a fund that does not require appropriation for some alternate use. For example, a future

legislature could decide to use the Abandoned and Derelict Vessel Funds for some other purpose.

MR. KING said that when the appropriation is made to the fund, the use of those funds is limited. If those funds were repealed, the funds would lapse back to the general fund.

[2:58:16 PM](#)

MR. STEININGER said he agrees with Mr. King. If those funds were repealed, the funds would lapse back to the General Fund. If the funds were used elsewhere, the funds would be an expenditure subject to the cap.

[2:58:42 PM](#)

SENATOR KIEHL asked if those dollars would count twice. The funds would count when deposited and count when expended.

MR. KING clarified that would be true if the legislature appropriated funds to the Derelict Vessel Fund, that the fund was subsequently depopulated, and another appropriation was made in the same year. He did not think that that would be true in most situations. The expenditure would apply to the cap when the appropriation to the fund was initially made. The funds would again be counted towards the cap in a future year when the funds were returned to the General Fund and are expended again.

[2:59:21 PM](#)

SENATOR KIEHL expressed concern about the opportunity cost that the state would lose. When the state is up against the cap, and those funds competed against all other uses of the funds, some other public need is not met. Even if the funds were drawn out in a subsequent year, if those funds count again towards the cap, it will displace the public needs twice.

MR. KING pointed out that there is also a revenue component. In the scenario described, there is an expenditure, a revenue, and another expenditure. The revenue and expenditure components would cancel one another out so it will net out as one expenditure.

SENATOR KIEHL agreed that he is describing the accounting procedures, but it would not be considered a new revenue.

CHAIR HOLLAND asked the administration to comment.

[3:00:37 PM](#)

MR. STEININGER responded that the administration sees the expanded definition and clarification as positive. The exemption of the unfunded liability of a state retirement system is a policy call of the legislature.

[3:01:03 PM](#)

SENATOR SHOWER removed his objection.

SENATOR KIEHL objected.

[3:01:12 PM](#)

A roll call vote was taken. Senators Myers, Shower, Hughes, and Holland voted in favor of Amendment 2 and Senator Kiehl voted against it. Therefore, Amendment 2 was adopted by a 4:1 vote.

[3:01:43 PM](#)

SENATOR HOLLAND moved to adopt Amendment 3, [work order 32-GS1664\A.5]:

32-GS1664\A.5
Marx
5/4/21

AMENDMENT 3

OFFERED IN THE SENATE
TO: SJR 5

BY SENATOR HOLLAND

Page 1, lines 11 - 13:

Delete "[, INCLUDING REVENUES OF A PUBLIC ENTERPRISE OR PUBLIC CORPORATION OF THE STATE THAT ISSUES REVENUE BONDS]"

Insert ", including revenues of a public enterprise or public corporation of the State that issues revenue bonds"

SENATOR SHOWER objected for discussion purposes.

[3:01:50 PM](#)

SENATOR HOLLAND explained Amendment 3. He read:

This amendment restores the exemption for corporate receipts. Public corporations are run like private business, with fees for service funding the operating costs of the corporation. Restoring the existing language in the constitution allows those self-funded

operations to function outside of the limitation of government growth.

CHAIR HOLLAND asked the administration to comment.

MR. STEININGER said the administration supports Amendment 3 since there were unintended consequences by removing this from the exemptions in the original drafting of SJR 5.

[3:02:45 PM](#)

SENATOR KIEHL said that the corporations must issue revenue bonds. He asked if appropriations to the corporations are considered revenues of the corporations.

MR. STEININGER responded that an appropriation of unrestricted general funds (UGF) would be subject to the cap. The operational costs funded through the activities of the corporation would not be subject to the cap. Additional infusion of UGF would be subject to the cap since it is a state revenue and not revenue of the corporation.

[3:03:54 PM](#)

MR. KING responded that funds provided by the state other than fees for service contractual obligations are not considered revenues of the corporation. Corporate receipts are revenues generated by the corporation and the operation of their business and not any subsidy that the government might appropriate from the general fund.

[3:04:20 PM](#)

SENATOR KIEHL offered his view that the state could use the public corporation model to directly levy fees on Alaskans and use the corporation to shift state functions off the books.

MR. KING related he has previously held this conversation. He identified the concern that funding that is currently in the operating budget could be shifted outside of the cap by creating a corporation. The revenues of the corporation are fees for services of the corporation so it is possible to circumvent the cap by creating a corporation with a public infrastructure such as a toll road or bridge. However, the function of the corporation would pay for itself since it would generate revenue to pay for its operations. For example, the Knik Arm Bridge and Toll Authority (KABATA) could be a public corporation that generates revenues outside the cap. However, the idea is that corporations generate revenue based on the services they provide. These corporations are not funded by taxpayer dollars.

If the intent of the spending limit is to limit government growth and restrict the generation of taxes, the existence of corporations should be viewed differently than a type of government program.

3:06:15 PM

SENATOR KIEHL agreed public corporations should be viewed differently. He related that Anchorage had a public corporation to handle downtown parking fees. Corporations are unelected, unaccountable entities created to provide what is otherwise a public service. He disagreed with incentivizing public corporations in the Constitution.

3:07:19 PM

SENATOR MYERS related his understanding that if Amendment 3 is not adopted, the ticket of a tourist for the Alaska Railroad (ARRC) would be subject to the cap. However, if Amendment 3 passes, those fees would no longer be subject to the cap and the ARRC could spend the revenue to further its operations.

3:08:06 PM

SENATOR HUGHES pointed out that the Alaska Marine Highway System (AMHS) might be restructured. The state wants the AMHS to provide services. She offered her belief that creating a corporation for the AMHS could save the ferry system.

SENATOR KIEHL said it has great potential. He said if the state needs to have a legislative process to keep the revenue bonding self-funding corporation under control.

3:08:56 PM

SENATOR SHOWER removed his objection.

SENATOR KIEHL objected.

3:09:07 PM

A roll call vote was taken. Senators Shower, Hughes, Myers, and Holland voted in favor of Amendment 3 and Senator Kiehl voted against it. Therefore, Amendment 3 was adopted by a 4:1 vote.

3:09:30 PM

SENATOR MYERS moved to adopt Amendment 4, [work order 32-GS1664\A.8]:

32-GS1664\A.8
Marx
5/6/21

AMENDMENT 4

OFFERED IN THE SENATE
TO: SJR 5

BY SENATOR MYERS

Page 3, line 3:
Delete "(b) [OR (c)]"
Insert "[(b) OR] (c)"

Page 3, lines 4 - 16:
Delete all material.

ReNUMBER the following resolution sections
accordingly.

Page 3, lines 22 - 26:
Delete all material and insert:
"Section 31. Budget Reserve Fund Transition. The
2022 amendments to the budget reserve fund (art. IX,
sec. 17) apply to the fiscal year ending June 30,
2024, and thereafter.
* **Sec. 4.** Article IX, sec. 17(b), Constitution of
the State of Alaska, is repealed."

ReNUMBER the following resolution section accordingly.

CHAIR HOLLAND objected for discussion purposes.

[3:09:41 PM](#)

SENATOR MYERS explained Amendment 4. He said that is similar to how the process currently works. Article IX, Section 17, Budget Reserve Fund, has four subsections. Amendment 4 will not change SJR 5, subsection (a), which establishes the revenue limit. Subsection (b) establishes the conditions under which the legislature can spend from the Constitutional Budget Reserve (CBR) with a majority vote. In fact, the legislature has never been able to spend out of the CBR with a majority vote. That will not change unless the legislature radically alters the way designated general funds are handled. Amendment 4 will remove subsection (b). Subsection (c) outlines how to spend CBR funds with a three-fourths vote. Subsection (d) provides for a repayment provision.

He explained that SJR 5 removes subsections (c) and (d). Amendment 4 would bring a subsection (b) and restore subsections (c) and (d). This means the legislature is still required to

payback CBR funds and either stop the payback or withdraw funds with a three-fourths vote.

CHAIR HOLLAND asked the administration for comments.

[3:11:38 PM](#)

MR. STEININGER answered that the administration is neutral on Amendment 4 because it is a policy decision for the legislature to decide whether to make repayments to the fund or eliminate repayment provisions and the three-fourths vote requirement.

SENATOR HUGHES asked if it would maintain the way it currently operates.

SENATOR MYERS agreed.

CHAIR HOLLAND removed his objection. There being no further objection, Amendment 4 was adopted.

[3:12:45 PM](#)

SENATOR KIEHL moved to adopt Amendment 5, [work order 32-GS1664\A.7]:

32-GS1664\A.7
Marx
5/6/21

AMENDMENT 5

OFFERED IN THE SENATE
TO: SJR 5

BY SENATOR KIEHL

Page 2, line 26:
Delete "**directly**"

CHAIR HOLLAND objected for discussion purposes.

[3:12:51 PM](#)

SENATOR KIEHL explained Amendment 5. The committee previously held discussions about removing "directly" from Article IX, Section 17 (a). He shared a memo from Legislative Legal Services attorney Marie Marx, dated April 30, 2021. The Office of Management and Budget (OMB) provided a letter dated April 11, 2019, from the Attorney General immediately prior to today's meeting, which he has not had an opportunity to review. Amendment 5 would make sure the amounts in dispute were deposited into the CBR on

the same terms they were for decades. He acknowledged that the memo describes changes. He said the changes affect tariff disputes, tax disputes, and audit disputes that are determined years later. The CBR was written to address windfalls, which should go in the savings account. He asked how Chair Holland would like to proceed.

CHAIR HOLLAND suggested that he withdraw Amendment 5 and take it up in the Senate Finance Committee.

3:15:42 PM

SENATOR KIEHL, in response to a question by Senator Hughes, referred to a letter from the Attorney General dated April 11, 2019.

CHAIR HOLLAND asked Mr. Milks to speak to the letter.

3:16:10 PM

MR. MILKS said he is familiar with a letter from the Attorney General dated April 11, 2019. The purpose of adding "directly" on page 2, line 26, is to stop some disagreements between the Department of Law and Legislative Legal Services. Currently, the Constitutional Budget Reserve (CBR) is an exception to the constitution prohibiting dedicating revenues. When the voters approved establishing the CBR, a certain revenue stream could be deposited to the CBR and not go to the general fund. There is only one other exception related to dedicated revenues in the Constitution, which is the Permanent Fund. Two Attorneys General, Lindemuth and Clarkson, reviewed the issue whether royalty amounts or oil and gas taxes in dispute are required to be deposited to the CBR. Other types of legal disputes involve tariff litigation. When ultimately resolved, it often means producers pay more taxes to the state. The question was whether resolution of tariff litigation should be deposited to the general fund or the CBR. Both attorneys general addressed this issue for the Legislative Budget and Audit Committee as outlined in the letter of April 11, 2019.

MR. MILKS said the Department of Law highlighted why the funds should be deposited to the general fund. In its lengthy legal analysis, it referred to the Alaska Supreme Court decision in *Wielechowski v. State*. The Alaska Supreme Court said the prohibition against dedicating revenues is intended to be broadly applied and the exceptions are narrow. Since tariffs are not even mentioned in the Constitution, the Department of Law (DOL) found that depositing tariff-related revenues the CBR was too expansive. The DOL opined it should be deposited to the

general fund. The letter indicated that in the 1990s, Attorney General Bothelo also determined tariff-related revenues should be deposited to the general fund. Nonetheless over time the revenues were deposited into the CBR. Legislative Legal identified that the issue is not fully resolved. In fact, it describes another way to interpret the law that determines that tariff-related revenues should be deposited to the general fund.

[3:21:05 PM](#)

MR. MILKS said that Amendment 5 seeks to insert the word "directly" into the CBR provision to removing any ambiguity regarding what should be deposited to the CBR and in the general fund. He related his understanding that legislative legal agrees Amendment 5 would remove any ambiguity. He said the background is laid out in the letter of April 11, 2019.

CHAIR HOLLAND asked the administration for comments.

[3:23:01 PM](#)

MR. STEININGER said the administration opposes Amendment 5. As Mr. Milks illustrated, there is a necessity to add clarification and remove any ambiguity from the current constitutional language.

[3:23:34 PM](#)

SENATOR KIEHL offered to redraft Amendment 5, to make it clear that the CBR should be funded with tax money after tariff settlements. He related his understanding that the CBR was created after the Trans Alaska Pipeline Settlements (TAPS).

[3:24:04 PM](#)

CHAIR HOLLAND removed his objection.

SENATOR KIEHL withdrew Amendment 5. He offered to revise it.

[3:24:26 PM](#)

SENATOR HOLLAND stated he would not offer Amendment 6.

[3:24:40 PM](#)

SENATOR HOLLAND moved to adopt Amendment 7, [work order 32-GS1664\A.10]:

32-GS1664\A.10
Marx
5/7/21

AMENDMENT 7

OFFERED IN THE SENATE
TO: SJR 5

BY SENATOR HOLLAND

Page 2, line 2:
Delete "three"
Insert "two"

SENATOR SHOWER objected for discussion purposes.

[3:24:43 PM](#)

CHAIR HOLLAND explained Amendment 7. He read:

This amendment attempts to clarify the allowable increase in the spending limit from year to year. In the version before the committee, the limit is calculated by averaging the previous three years' budgets, which are typically increasing for inflation. It then allows the budget to grow by the cumulative rate of inflation over the previous three years. This approach ends up allowing the budget to grow by more than inflation from year to year. The amendment reduces the cumulative inflation adjustment to two years, limiting growth to a number closer to the rate of inflation.

[3:25:34 PM](#)

At ease

[3:25:53 PM](#)

CHAIR HOLLAND reconvened the meeting.

[3:26:05 PM](#)

MR. STEININGER said that the administration does not have a position on Amendment 7.

SENATOR KIEHL asked if Amendment 7 would adjust three years of spending with two years of inflation. He asked whether it would lead to a reduction of the real dollar spending over time.

MR. STEININGER answered not necessarily. He said this would take a three-year average of prior year appropriations and apply an inflationary factor. Amendment 7 would clarify two versus three years of inflationary pressure and change the time period for inflation. He said he has not created any models since he just received this today.

[3:27:23 PM](#)

MR. KING responded that this is basically a mathematical model. He explained that stripping out the volatility and assuming that the rate of budget growth is the rate of inflation, the three-year average rate budget will be equal to the budget two years prior. This means taking the average of three years will be the budget that was two years ago. Adding one year of inflation would take us to the current year; adding a second year provides inflation adjustment for the future year being budgeted. Adding a third year would give a kicker so the allowable growth is beyond the rate of inflation.

[3:28:18 PM](#)

SENATOR KIEHL asked if that didn't set as its initial case that the prior three years matched inflation, which would prevent that from happening.

MR. KING asked for clarification on the question.

SENATOR KIEHL related his understanding that the three years used in the calculation of the base case in the mathematical model for the nominal dollar budgets reflected the actual cost of government.

MR. KING nodded yes.

SENATOR KIEHL said that the assumption becomes invalid once this factor is applied because only two years of inflation can be used. The base case of three years of inflation cannot exist.

MR. KING responded that is not mathematically accurate. He explained that every time this is used for the next year, it provides the previous budget plus inflation. Staying at the limit will always draw out two years of accumulated inflation.

[3:29:36 PM](#)

SENATOR KIEHL asked for modeling.

MR. KING responded that this represents a simple mathematical exercise. He characterized it as a mathematical model and not a computer model.

[3:29:49 PM](#)

SENATOR HUGHES asked Mr. Steininger to comment.

MR. STEININGER said that Mr. King and OMB staff have discussed the mathematics and agree the math is accurate.

3:30:25 PM

SENATOR KIEHL expressed concern that the way SJR 5 is written, it can only adjust for population or inflation but not both. He offered his view that it will be necessary to cut real government spending every year forever. He characterized it as a problem.

3:31:29 PM

SENATOR SHOWER agreed that it could be a problem but for the last five to six years the state has experienced a net population outflow yet government growth continues to rise.

3:32:05 PM

SENATOR HUGHES asked Mr. King if it will be necessary to cut real government spending every year forever.

MR. KING responded that on a nominal basis that it is definitely not true. The inflation adjustment means some government spending would be increasing at the rate of inflation. He said that whether the rate of inflation is commensurate with what the public needs is a different question. Under SJR 5, there is no adjustment for population. In the event that population increases the real per capita spending will be reduced year by year. However, the real spending in total dollars will not be reduced.

MR. STEININGER agreed the math as Mr. King laid it out is accurate.

3:33:02 PM

SENATOR KIEHL said that real dollar was the wrong economic term to use; rather, it is the state's ability to meet Alaskans' needs to adjust for population and inflation. He acknowledged that this would not require cuts when population shrinks. This will leave the state lagging in any kind of growth scenario since SJR 5 will change the Constitution permanently.

3:33:46 PM

CHAIR HOLLAND removed his objection. He offered to request that Senate Finance review this part of the resolution.

3:34:07 PM

SENATOR HUGHES offered her view that the original spending limits in the Constitution allowed for population and inflation, but it rose too high.

[3:34:43 PM](#)

SENATOR SHOWER removed his objection.

SENATOR KIEHL objected.

[3:34:51 PM](#)

A roll call vote was taken. Senators Myers, Hughes, Shower and Holland voted in favor of Amendment 7 and Senator Kiehl voted against it. Therefore, Amendment 7 was adopted by a 4:1 vote.

[3:35:23 PM](#)

SENATOR KIEHL offered to bring a revised Amendment 5 forward as soon as Legislative Legal can provide it.

[3:35:39 PM](#)

At ease

[3:39:46 PM](#)

CHAIR HOLLAND reconvened the meeting.

[3:39:55 PM](#)

CHAIR HOLLAND stated his intention to move the resolution today.

[3:40:24 PM](#)

SENATOR SHOWER moved to report SJR 5, Version A, as amended, from committee with individual recommendations and attached fiscal note(s).

SENATOR KIEHL objected. He said it is always disappointing when a judiciary committee lacks adequate time to have deep, meaningful, and informed conversations on legal questions when considering measures to change the Alaska Constitution. The short timeframe has limited the administration's ability to provide answers to questions in advance of meetings.

[3:41:40 PM](#)

SENATOR KIEHL offered his view that this proposal attempts to put artificial caps on what Alaskans can ask of their government. It is an attempt to write into Alaska's foundational document limits that will ensure that Alaska's government will have a difficult time when times are good. Currently, times are tough since revenues are down, inflation is negative and population is dropping as people leave the state. Although Alaska is experiencing budget constraints, Alaskans have been in this situation before. In those situations, Alaskans have elected legislators who have reduced the budget. Alaska's Constitution allows Alaskans to set the priorities in a

republican form of government. This proposal attempts to put limits on what Alaskans can achieve from their government. It does so in ways that place irresponsible restraints on Alaskans' ability to meet their needs from government. He acknowledged that the old spending limit did not work. While he appreciated some changes in the resolution, ultimately the legislature either trusts people to elect legislators to do the job or it can set up a situation in which no matter what Alaskans choose they cannot achieve it.

CHAIR HOLLAND offered his view that the committee heard from legal experts. He offered his willingness to trust them.

[3:45:07 PM](#)

SENATOR HUGHES spoke about the process. She stated that this resolution has been in the committee for several months. During that time concerns could have been raised, conversations that with the administration could have occurred before the resolution was scheduled for a hearing. She recalled times when she has had to withdraw amendments and work with the next committee of referral. She offered her belief that this is not an unusual process.

[3:46:08 PM](#)

A roll call vote was taken. Senators Myers, Shower, Hughes, and Holland voted in favor of moving SJR 5, Version A, as amended, from committee and Senator Kiehl voted against it. Therefore, the CSSJR 5(JUD) was reported from the Senate Judiciary Standing Committee by a 4:1 vote.

SB 39-BALLOT CUSTODY/TAMPERING; VOTER REG; MAIL

[3:46:37 PM](#)

CHAIR HOLLAND announced the consideration of CS FOR SENATE BILL NO. 39(STA), "An Act relating to voting and elections; relating to voter registration; relating to ballots and a system of tracking and accounting for ballots; relating to retention of election data; designating as a class A misdemeanor the collection of ballots from other voters; designating as a class C felony intentionally opening or tampering with a sealed ballot, certificate, or package of ballots without authorization from the director of the division of elections; designating as a class C felony breaching, hacking, altering, or tampering with election data or ballots; designating as a class B felony election fraud; designating as a class C felony sharing election data results before the close of the polls on election day; and providing for an effective date."

[CSSB 39(STA) was before the committee.]

3:47:23 PM

SENATOR SHOWER, speaking as sponsor, paraphrased the sponsor statement [Original punctuation provided]:

Senate Bill 39, updates Alaska's decades-old election statutes, strengthening voter access and improving integrity so Alaskans may regain confidence in our election system. We sometimes disagree with election results, but rarely in our history have we refused to accept them. A troubling trend has emerged where entire segments of our nation not only disagree with election results but refuse to acknowledge them as legitimate. It happened in 2016, and again in 2020. Whether these concerns are real or perceived, we must find a way to restore all people's faith in our election system as it is a cornerstone to our Constitutional Republic.

"I began working on election issues in 2018, involving the accuracy of Alaska's election data and our voter rolls. Problematic areas within our system created integrity concerns and irreconcilable errors which limited citizens from qualifying their ballots when the Division of Elections questioned or rejected them."

Alaska's current election model is built on a foundation of disqualification and rejection of ballots. A significant aspect of SB 39 is to shift toward greater voter inclusion with the qualification of ballots. "Voters should know when their ballots are questioned or rejected and be informed of it immediately. Ballot curing is a two-part process that includes immediate voter notification and then providing voters reasonable time and opportunity to correct identified technical deficiencies. Once notified, the voter should have an opportunity to correct technical issues rather than the Division disqualifying the ballot and not counting their vote. Curing of ballots is an essential component of SB 39."

Improvements to voter access required extensive additional work on existing statutes that have contributed to limiting all voters. Before the 2020

elections, only two states had clear regulations and policies for vote-by-mail procedures. A new measure of inclusion is amending the current statute to accept additional types of qualifying identification such as Tribal identification as one example. Alaska is a diverse state, and our Indigenous First Alaskans are an essential segment with unique needs not experienced in urban communities. "My goal is to include additional provisions for increased Tribal participation and for more opportunities for communities to take a greater role in their local voting systems, just as some larger communities already practice across Alaska."

3:51:38 PM

Consistency and standardization of protocols is an overarching objective, and communities that already practice vote-by-mail are enhanced by improved security and authentication. Additionally, absentee voting improvements expand the option to voters where they may request an automatic absentee ballot. Alaskans should be able to vote in the manner which suits them and feel confident that their vote is secure and counted. If we shift to one type of voting or another, we risk alienating a significant portion of the population and inadvertently suppressing votes. This is not a bill to suggest one method of voting over another. SB 39 addresses the quality of the voter data, security standards, and chain of custody.

Another major area SB39 improves is voter registration roll accuracy. Alaska checks only a few databases against eligible voter lists; SB39 enables the state to clean the voter rolls more often and cross-reference a broader segment of other available databases. It requires third-party supervised bi-annual audits of our voter rolls. Municipalities such as Anchorage use state data for their vote-by-mail system. It is self-evident that when the state's data is not accurate, neither is their vote-by-mail system based upon the over mailing of ballots. There are thousands more people on our voter rolls than are eligible to vote in Alaska. For example, the Division of Elections checks our voter data with 31 other states in ERIC. Those other 19 states equal over 135 million people. Data is also not checked with many local and national sources which would certainly

improve the accuracy of our voter rolls. Do we want a 60% solution or a 100% solution? Alaska voters deserve better.

3:54:32 PM

A cornerstone to how SB 39 mitigates chain of custody concerns, and vulnerable or compromised voter data, is through a well-established methodology, Multi-Factor Authentication (MFA), and best practice data security protocols, which many of the most secure institutions utilize. 21st century solutions have been around for a long time and are used worldwide in many ways. A recent Biden Administration report and an independent Harvard Journal of Law and Technology study recommend states implement Multi-Factor Authentication and chain of custody protocols to strengthen election integrity and ensure one voter equals one vote.

3:56:22 PM

In addition to Multi-Factor Authentication, this bill requires the Division of Elections to adhere to the US Postal Service's best practice recommendation for a vote by mail ballot chain of custody system. By utilizing the USPS's existing ballot envelope barcode procedure, voters can account for their ballot anywhere it is in transit. Citizens should be able to track their ballot from the time it is shipped from the Division until received by the voter and until it is returned to the Division. These systems also notify a voter if their ballot has been questioned, rejected and may even include ballot curing procedures. Nearly everyone orders products online today. Most things can be tracked, down to the minute, and a precise location; we can also do so with ballots using election-specific software readily available and already in use in many states for ballot tracking.

The platform for elections security requires 3 critical pieces; data security, accurate voter rolls, and a qualitative, secure chain of custody. In October of 2020, a data breach resulted in 113,000 Alaskans having their personal data exposed. The Division confirmed on the record that the stolen data could be used to apply for and submit ill-cast ballots and identity theft. SB 39 addresses these, and many other concerns, by bringing Alaska into the 21st century

3:58:27 PM

SENATOR SHOWER said he is working with all parties in the other body to address any concerns.

3:59:06 PM

SENATOR HUGHES stated she appreciated all the work done on SB 39. She acknowledged that the public sometimes makes comments on an earlier version of a bill. She offered her view that the sponsor's intentions were good. She said she hoped Alaskans will be open minded about the bill.

SENATOR SHOWER stated that the comments about the bill were initially negative but are more balanced now.

[SB 39 was held in committee.]

4:00:24 PM

There being no further business to come before the committee, Chair Holland adjourned the Senate Judiciary Standing Committee meeting at 4:00 p.m.